

1984 WL 249915 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 26, 1984

*1 Mr. John W. Still
Member
Greenwood County Council
North Fall Acres
112 Effie Drive
Greenwood, South Carolina 29646

Dear Mr. Still:

Attorney General Medlock has referred your letter of June 11, 1984, to me for response. You asked whether your accepting an administrative position with the Piedmont Multi-County Mental Retardation Board would constitute an office of honor or profit within the meaning of the dual office holding prohibition contained in the Constitution of the State of South Carolina. You also advised this Office that you are a member of Greenwood County Council, with your term expiring December 31, 1984.

[Article XVII, § 1A of the South Carolina Constitution](#) provides that ‘. . . no person shall hold two offices of honor or profit at the same time.’ For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. [State v. Crenshaw](#), 274 S.C. 475, 266 S.E.2d 61 (1980). This Office has determined on many occasions that a member of a county council would hold an office for dual office holding purposes. See, for example, [Ops. Atty. Gen.](#) dated December 20, 1983, and November 15, 1983 (copies enclosed).

During our telephone conversation on Tuesday, June 19, you advised this Office that as to the Piedmont Multi-County Mental Retardation Board, you would actually be employed, at a specified salary, for the purposes of counseling and rehabilitating physically and mentally handicapped persons, toward the goal of assisting them to find gainful employment. You would not be a member of the governing board of the facility where you would work. Your activities and decisions would be subject to supervision and review by the director of the facility. No oath is required, and you would occupy the position ‘at will,’ as no tenure is specified. The position is not an elected one and is not provided for by statute; the duties are also not specified by statute. The court in [Sanders v. Belue](#), *supra*, has stated the ‘one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.’ 78 S.C. at 174. Thus, it is the opinion of this Office that you would be an employee of the Piedmont Multi-County Mental Retardation Board rather than an officer.

If you were to be employed by the Piedmont Multi-County Board and serve on the Greenwood County Council simultaneously, then the dual office holding prohibition of the Constitution of the State of South Carolina would not be contravened.

*2 A potential ethical problem may exist if you were to vote, as a member of Greenwood County Council, on any appropriations for the Piedmont Multi-County Mental Retardation Board, by which body you would be employed. This Office has previously determined that the Board is a political subdivision of the State for retirement benefit purposes; see [Ops. Atty. Gen.](#) dated January 8, 1979, and November 8, 1978 (copies enclosed). While the board is not a county agency, it does receive county funds appropriated by Greenwood County Council as a portion of its total funding. We would advise that, should you accept employment with the Board, you observe the ethical procedures specified by various statutes enumerated below.

A portion of South Carolina's Ethics Act, Section 8-3-410, Code of Laws of South Carolina (1983 Cum.Supp.) provides in part (1) that '[n]o public official or public employee shall use his official position or office to obtain financial gain for himself.' Because a portion of the Board's funding would come from your county council, your voting on the Board's appropriation could possibly be viewed as using your position on council for financial gain through your employment by the Board. The steps to be taken to avoid an ethics problem are specified by [Section 8-13-460 of the Code](#):

Any public official . . . who, in the discharge of his official duties, would be required to take action or make a decision which would substantially affect directly his personal financial interest . . . shall instead take the following actions:

(a) Prepare a written statement describing the matter requiring action or decisions, and the nature of his potential conflict of interest with respect to such action or decision.

(c) . . . If the public official is a member of the governing body of any . . . county, . . . he shall furnish a copy to the presiding officer and to the members of that governing body, who shall cause such statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists, and shall cause such disqualification and the reasons therefor to be noted in the minutes.

If you accept employment with the Board, you should follow the guidelines specified in the Ethics Act to avoid any appearance of impropriety or conflict of interest during your remaining tenure on Greenwood County Council. You may wish to consult the State Ethics Commission for further advice or information; the Commission may be reached by calling 758-7408 or by writing to Gary R. Baker, Executive Director, SCN Center, Suite 930, 1122 Lady Street, Columbia 29201.

If the Board receives federal funds, you may wish to check with the United States Civil Service Commission to determine whether you may be in violation of the Hatch Act, if your membership on County Council resulted from a partisan election. The Commission's address is Office of the Special Counsel, Civil Service Commission, 1120 Vermont Avenue NW, Washington, D.C. 20419; telephone number, (202) 653-7143.

*3 Please advise this Office if clarification or additional information is needed.

Sincerely,

Patricia D. Petway
Assistant Attorney General

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